

NTSB Order No. EA-3981

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 7th day of September, 1993

Respondent .

Docket SE-11065

<sup>1</sup> In that order we upheld the Administrator's order suspending respondent's airline transport pilot certificate (with waiver of sanction) based on his unauthorized entry onto an active runway, violation of 14 C.F.R. 91.87(h) [now recodified as 91.129(i)]. We rejected, as did the law judge, respondent's defense that he was entitled to rely on his co-pilot's statement that they were cleared to take off from that runway.

air traffic control (ATC) whenever the pilot in command misses part of a clearance. Respondent states that this requirement will impact the accepted practice of dividing piloting duties, and suggests that it will increase the workload of air traffic controllers. Even assuming that respondent has correctly stated the effect of the Board's decision,<sup>2</sup> we do not view this as a valid basis for reconsideration. Indeed, we agree with the Administrator that "attentiveness to the scope of clearances about which the flying pilot is uncertain is beneficial" to aviation safety.

Respondent further argues, by citing Administrator v. Fay and Takacs, NTSB Order No. EA-3501 (1992), for the proposition that,

"the pilot in command is responsible for the overall safe operation of the aircraft and [] he can avoid responsibility for a violation only if: a particular task is the responsibility of another; he has no independent obligation or ability to ascertain the information; and he has no reason to question the other's performance,"

the Board retroactively applied law which was not in effect at the time of respondent's violation. Respondent is mistaken, however, in his description of Fay and Takacs as "new law." The quoted language merely reflects our summary of the established principles already enunciated in prior Board caselaw regarding the reliance defense.<sup>3</sup>

<sup>2</sup> Our holding that the reliance asserted in this case was not reasonable was based on our conclusion that respondent had reason to question his first officer's characterization of the clearance and had the ability and opportunity to ascertain personally whether the flight was cleared. NTSB Order No. EA-3907 at 5. Under other circumstances, we might well find a pilot's reliance to be reasonable. Accordingly, contrary to respondent's suggestion, our decision in this case does not stand for the proposition that a flying pilot in command who misses part of an ATC clearance must in every instance bypass his co-pilot on the radios and personally contact ATC for verification.

<sup>3</sup> See e.g., Administrator v. Crawford, 5 NTSB 1000 (1986); Administrator v. Dickman and Corrons, 3 NTSB 2252, 2257-60 (1980); Administrator v. Hart, 2 NTSB 1110 (1974); Administrator v. Thomas, 3 NTSB 349 (1977); Administrator v. Lusk, 2 NTSB 480 (1973); and Administrator v. Johnson and King, 1 NTSB 1510 (1972).

We disagree with respondent's assertion that the reliance defense we accepted in Crawford could not have succeeded under the standard set forth in Fay and Takacs. Specifically, we do not believe, as respondent suggests, that the pilot in Crawford (who was piloting a B-727 on final approach to landing) had the

In sum, respondent has shown no reason why we should reconsider our earlier decision.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's petition for reconsideration is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)  
same ability and opportunity as did respondent in this case (who had no other flight duties while he waited on the ground for his taxi clearance) to contact ATC for verification of the applicable clearance.